

REMARKS

This application is being filed to continue the prosecution of parent application Serial Number 08/582,901 filed January 4, 1996. Subsequent to entry of this preliminary amendment, the application now contains claims 26-30, 43-46 and 48-76. Claims 48, 57, 63, 64, 68 and 72 are independent, the remaining claims are dependent claims.

Applicant submits that each of the claims patentably distinguishes from the act cited during the course of the prosecution of the parent application, wherefore early consideration and allowance of the application is solicited.

In an interview conducted in April of 1999, the examiner of the parent application made it clear that he believed that the references relied on as a basis for the final rejection were inapt. The examiner, however, cited two references at that time, an On Sale patent (5835896) and an On Sale publication of May 24, 1995, entitled "*On Sale Brings Thrill of Auctions and Bargain Hunting On-Line*: Unique Internet retail service debuts with week-long charity auction for the computer museum of Boston".

This applicant has pointed out, in the prosecution of the parent application, that the January 1996 filing date of the parent application antedates the date to which patent 5835896 is entitled (it's filing date of March 29, 1996) wherefore applicant submits the patent is not prior art to this application.

The claims in this application are, in the main, directed at auctions in which a participant can "clinch" one or more of the objects subject to the auction, before the auction itself is concluded.

The specification described several different embodiments, one of which is so-called clock auction. Here, the auctioneer sets the price (clock) and the bid from each bidder represents the quantity sought by the bidder (in a buying situation). The price (clock) starts low, and consequently the aggregate bid in the initial rounds is typically much greater than the quantity available (as the clock ascends the quantity sought falls towards the quantity available). As described in the application, the applicant has discovered that benefits can accrue by allowing a participant to "clinch" some of the objects prior to termination of the auction. To implement the invention, however, a determination is effected to first segregates each bidder in turn. The quantity bid by all other bidders is summed and compared to the quantity available. If the quantity bid by all of the bidders is less than the quantity available, and the bidder being considered has bid for at least some of the difference, then that bidder has "clinched" the amount of the bid up to the difference.

Independent claims 48, 57, 63 and 64 distinguish over the art based on the "clinching" aspect as is described above. More particularly, claim 48 is directed at a method for conducting automated auction. The method includes a step with :

“determining separately, for each of a plurality of bidders, a quantity of objects, if any, to be assigned in the current round, in the event of such a determined quantity, assigning the determined quantity to the determined bidder”.

This determination distinguishes from the Joint Report (another reference cited during the course of the prosecution of the parent application) in that, in the auction described in the Joint Report, there is no determination that is made “separately, for each of a plurality of bidders”. Rather, in the Joint Report, a sum of the bids is compared to the quantity available and the auction concludes in the event the sum of the bids is less than or equal to the quantity available. This is not a “determination” made separately for a plurality of bidders, as claimed. Each of the other independent claims distinguishes from this art on the same basis.

The same claims also distinguish from the On Sale publication. The On Sale publication describes the use of “three inter active formats: standard auctions, Dutch auctions and markdowns”. Standard auctions do not correspond to the subject matter of any of these claims for a number of reasons, at least one of which is that the standard auction does not include a separate determination as is recited in each of these claims.

The Dutch auction that is referred to in the On Sale publication occurs “when a number of identical items are offered for sale at the same time. The highest bidders purchase the available inventory at the lowest successful bidder’s price.” Clearly, there is no separate determination here either. There is, in the Dutch auction, only one determination that lumps all of the bidders in a pool and determines if the quantity sought by the bidders is less than or equal to the quantity available. In the event that determination is positive, then as described in the On Sale publication,

the highest bidders purchase the available inventory "at the lowest successful bidder's price".

There is no "separate determination", as is called for in each of these claims.

Finally, the On Sale publication refers to a markdown, however the markdown is not an auction at all. Consequently, it too lacks the separate determination subject matter of the claims.

The application also includes additional independent claims 68 and 72.

Claim 68 is more specific in respect of the "clinching" subject matter than claims 48, 57, 63 and 64. Claim 68 specifically identifies the sub steps in the separate determination step of clause C. Applicant submits that claim 68 distinguishes from the cited art referred to, for the reasons already given.

Claim 72 is patterned after or more specific than the claims in the parent application directed at application of transaction curves. Applicant submits that this claim distinguishes from the cited art on this basis.

The remaining claims are dependent either directly or indirectly on one of claims 48, 57, 63, 64, 68 or 72, and therefore are patentable for the reasons already given.

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